

Libby 001



Access to OU-1

DC Orr

to:

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09/22/2011 10:28 AM

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Ms. Campbell;

In the March 11, 2011 Kootenai Valley Record Mayor Doug Roll explained why he thought EPA was pushing the City into a corner on giving access to OU-1. He is quoted at the end of the article as saying "The Council's going to have to make a decision, it's their decision; it's not my decision."

EPA is now working on OU-1. The Council has never voted to give EPA access.

EPA's Rebecca Thomas and Mayor Roll have a history of keeping their negotiations secret from the Council, we have never heard why they changed the unit rate in their initial negotiations on restoration. I suspect they have arrived at an access agreement out of the prying eyes of the public, or the Council for that matter, somewhere in the smoke-filled backrooms of City Hall. This would be illegal.

On 8-4-11, Ms. Thomas requested access in an email to Council, it was never brought to a vote. On 8-05-11 City Attorney James Reintsma stated that if a vote has not been taken on access issues, it must be addressed. On 8-08-11 I brought to the attention of Attorney Reintsma the conflicting loyalties of Attorney Payne in giving the Council advice on this issue while be paid by the EPA.

EPA went to work on OU-1 without consent.

When the Mayor publicly proclaimed that the Council would make decisions on access, I developed an argument I hoped would influence the decision.

I wanted to argue that the State of Montana only signed a ROD with the condition that there would be zero exposure pathways on OU-1 after remediation. EPA and the State guaranteed us no exposures. This is required because EPA has proceeded ahead of the science that may have provided defensible levels of exposure. Without a risk assessment or toxicological numbers the only way government officials can carry out their duty to protect human health was to require that no pathways of exposure remain on OU-1. Zero. Zip. Zilch. There is no scientifically defensible safe level of exposure.

I have further argued, in email on 8-8-11 that if EPA keeps their word on closing pathways of exposure they will incur no liability and can grant the City indemnity without violating the terms of the Anti-Deficiency Act.

The State just paid \$43 million for their education on this principle of the duty of government.

EPA's actions on OU-1 are not closing pathways of exposure, in fact, EPA is increasing exposures in our public park as I pointed out in a recent email concerning the parking area for DTSAR. This will end badly.

If Mayor Roll lied to the public about this decision, I want to ensure that he alone takes responsibility for the consequences of his decision.

Please let me know what authority EPA has to be moving dirt on OU-1 since the City has not granted access.

Sincerely, DC Orr